

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2005-0811, In re Juvenile 2005-0811, the court on November 3, 2006, issued the following order:

The appellant, the mother of Juvenile 2005-0811, appeals an order of the probate court terminating her parental rights. She contends that the probate court erred in: (1) finding that DCYF had extended reasonable efforts to address her drug addiction; (2) failing to consider her improvement at the time of trial; (3) terminating her rights because she chose to attend a long term treatment program during which time she was unavailable to exercise custody over her child; (4) finding that termination was necessary to ensure the child's stable and secure environment; and (5) finding that the child's best interests required termination of her parental rights. We affirm.

Before a court may order the termination of a parent's rights, the petitioning party must prove a statutory ground for termination beyond a reasonable doubt; one such ground is the failure to correct conditions leading to a finding of neglect under RSA chapter 169-C. In re Juvenile 2003-195, 150 N.H. 644, 648 (2004); RSA 170-C:5, III (2002). We will not disturb the probate court's decree in a termination of parental rights case unless it is unsupported by the evidence or plainly erroneous as a matter of law. In re Antonio W., 147 N.H. 408, 412 (2002). The probate court is in the best position to assess and weigh the evidence because it has the benefit of observing the parties and their witnesses; we therefore do not consider whether we would have found differently but rather whether a reasonable person could have found as the probate court did. See In re Craig T., 144 N.H. 584, 585 (1999).

In this case, the trial court found that DCYF: (1) provided the appellant with a diagnostic evaluation with a therapist who specialized in substance abuse and domestic violence; (2) asked her to participate in a substance abuse evaluation; and (3) offered random drug screenings. The trial court further found that the appellant: (1) failed to follow through on individual and couples counseling; (2) was unavailable for several random drug screenings; and (3) violated visitation contracts. The appellant argues that DCYF should have offered intensive residential treatment to satisfy the reasonable standards required by RSA 170-C:5, III; we disagree. Even if we assume that DCYF might be required to provide such a program in some cases, see In re Jonathan T., 148 N.H. 296, 301 (2002) (recognizing reasonable efforts analysis includes assessment of State's available staff and financial resources), in this case, the appellant not only failed to avail herself of the programs made available to her, but also testified that she did not request a residential program and would likely not have wanted one at the time in question.

The appellant also argues that the probate court failed to consider her improvement at the time of trial. As DCYF correctly notes, any improvement that had taken place occurred while she was incarcerated or in residential treatment.

Evidence was presented concerning the success rate of drug treatment and the appellant's suspended prison sentence, which required completion of the academy program following her completion of her drug treatment program. Given the length of time that the child had been in foster care, we find no error in the trial court's conclusion that any improvement exhibited by the appellant was insufficient to establish a reasonable possibility that she could be reunited with her child within a reasonable period of time. See In re Angel N., 141 N.H. 158, 163 (1996) (while parental improvement is factor, real test is whether reasonable possibility exists of reuniting parent and child within reasonable period of time). The appellant misconstrues the probate court's order when she argues that her rights were terminated because she chose to attend a long-term treatment program.

Finally, the appellant contests the probate court's conclusion that termination of her parental rights was in the best interests of the child. The child had been removed from the appellant's care in November 2003; in October 2005 the appellant still had not demonstrated that she could remain free from illegal drugs for a sufficient time to make it safe for the child to return to her custody. Given the length of time before any return might be possible and the child's anxiety both about the success of the appellant's treatment and removal from the foster parents' home, we find no error.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**